2269.

SUPREME COURT OF THE UNITED STATES.

No. 185.

WILLIAM POLLARD'S HEIRS AND REPRESENTATIVES, PLAINTIFFS IN ERROR.

vs.

GAINES KIBBE.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

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J. & G. S. Gideon, printers.

THE UNITED STATES OF AMERICA,

To Gaines Kibbe, greeting:

You are hereby cited, admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Goodtitle, ex dem. John Pollard, William Pollard, John Fowler and Harriet, his wife, late Harriet Pollard, Henry P. Ensign and Phebe, his wife, late Phebe Pollard, George Huggins and Louisa, his wife, late Louisa Pollard, Joseph Case and Eliza, his wife, late Eliza Pollard, heirs and legal representatives of William Pollard, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this first day of September, in the year of our Lord one thousand eight hundred and forty-seven.

HENRY W. COLLIER,
Chief justice of the supreme court of Alabama.

UNITED STATES OF AMERICA,
Southern district of Alabama:

I, John Fitts, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the plaintiffs in error have given a bond with sufficient security in the sum of two hundred dollars, conditioned for the payment of the costs of this suit in the appellate court, which bond is on file in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and the seal of said court, this twentieth day of October, A. D. 1847.

JOHN FITTS,
Clerk circuit court southern district of Alabama.

Citation.

Received 22d October, 1847, and on the 23d day of October, 1847, I served a copy of the within notice and citation on Messrs. Stewart and Easton, attorneys for Gains Kibbe in this case.

GEORGE HUGGINS,
Sheriff Mobile county.
By M. J. D. BALDWYN,
Deputy Sheriff.

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of said State, in which a decision could be had in the suit, between John Goodtitle, ex dem. John Pollard, Wm. Pollard, John Fowler and Harriet, his wife, late Harriet Pollard, Henry P. Ensign and Phebe, his wife, late Phebe Pollard, George Huggins and Louisa, his wife, late Louisa Pollard, Joseph Case and Eliza, his wife, late Eliza Pollard, heirs and legal representatives of William Pollard, deceased, and Richard Shamtitle, [vs.] Gains Kibbe, defendant, wherein was drawn in question the validity of a treaty or statute, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said John Goodtitle, ex dem. John Pollard, William Pollard, John Fowler and Harriet, his wife, late Harriet Pollard, Henry P. Ensign and Phebe, his wife, late Phebe Pollard, George Huggins and Louisa, his wife, late Louisa Pollard, Joseph Case and Eliza, his wife, late Eliza Pollard, heirs and legal representatives of William Pollard, deceased, as by their complaint appears; we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the Monday of next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first day of September, in the year of our Lord one thousand eight hundred and forty-seven.

Allowed by HENRY W. COLLIER,
Chief justice of the supreme court of Alabama.

THE STATE OF ALABAMA,
In the supreme court of said State:

JOHN GOODTITLE, ex dem.
heirs of William Pollard,
vs.
RICHARD SHAMTITLE.

Be it remembered, that on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-five, there was filed in the office of the clerk of the supreme court of said State a transcript of record in words and figures as follows, to wit:

Pleas before the honorable John Bragg, judge of the circuit court for Mobile county and State of Alabama, at a term thereof begun and holden on the fourth Monday after the fourth Monday of March, 1845.

THE STATE OF ALABAMA, MOBILE COUNTY,
Circuit court, November term, 1837.

Richard Shamtitle, late of Mobile county, was attached to answer John Goodtitle of a plea, wherefore with force and arms he entered into a messuage or lot of land, with the appurtenances, situate in the county and city of Mobile, which John Pollard, William Pollard, John Fowler and Harriet, his wife, late Harriet Pollard, Henry P. Ensign and Phebe, his wife, late Phebe Pollard, George Huggins and Louisa, his wife, late Louisa Pollard, Joseph Case and Eliza, his wife, late Eliza Pollard, demised to the said John Goodtitle for a term which is not yet expired, and ejected him from his said farm, and the wrongs to him did, to the great damage of the said John Goodtitle, and against the peace and dignity of the State of Alabama; and whereupon the said John Goodtitle, by his attorney, George F. Salle, complains that, whereas the said John Pollard, William Pollard, John Fowler and Harriet, his wife, Henry P. Ensign and Phebe, his wife, George Huggins and Louisa, his wife, Joseph Case and Eliza, his wife; which said John Pollard, William Pollard, Harriet, Phebe, Louisa, and Eliza, are the heirs at law of William Pollard, deceased, on the fifteenth day of March, one thousand eight hundred and thirty-seven, at the city aforesaid and county aforesaid, had demised to the said John Goodtitle the said messuage or lot of land, lying in the city of Mobile, bounded on the north by the south boundary of what was originally designated as John Forbes & Co's canal, on the west by Water street, on the east by a lot in the occupancy of, or claimed by, Bartlett and Waring, and on the south by what is now called Government street; to have and to hold the said messuage or lot of land, with the appurtenances, to the said John Goodtitle, and his assigns, from the said fifteenth day of March, one thousand eight hundred and thirty-seven, to the end and term of fourteen years from thence next ensuing, to be complete and ended. By virtue of which said demise, the said John Goodtitle entered into the said messuage or lot of land, and was thereof pos-

sessed, and being so possessed thereof, the said Richard Shamtitle afterwards, to wit, on the 17th day of March, in the year aforesaid, with force and arms, so entered into the said messuage or lot of land which the said lessors demised to the said John Goodtitle in form aforesaid, and for the term aforesaid, which is not yet expired, and ejected the said John Goodtitle out of his said farm, and other wrongs to him did, to the great damage of the said John Goodtitle, and against the peace and dignity of the State of Alabama, whereby the said Goodtitle saith that he is injured and damaged to the value of fifteen thousand dollars; and therefore he brings suit, &c.

Mr. GAINS KIBBE: I am informed that you are in possession of, or claim title to, the premises mentioned in this declaration of ejectment, or to some part thereof, and I being sued in this action as casual ejector, and having no claim or title to the same, advise you to appear at the next term of the circuit court of Mobile county, to be holden on the 2d Monday after the 4th Monday of October, one thousand eight hundred and thirty-seven, by some attorney of that court, and then and there, by a rule to be made of the same court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

Yours, &c.,

August 2d, 1837. RICHARD SHAMTITLE.

It is ordered by the counsel of the attorneys for both parties, that Gains Kibbe be made defendant, in the stead of the now defendant Shamtitle, and do forthwith appear at the suit of the plaintiffs, and receive a declaration in ejectment for the premises in question, and forthwith plead thereto not guilty; and, upon the trial of the issue, confess lease entry, and ouster, and insist upon the title only; otherwise, let judgment be entered for the plaintiff against the defendant, Shamtitle, by default; and if upon the trial of the said issue, the said Kibbe shall not confess entry and ouster, whereby the plaintiff shall not be able further to prosecute his writ against the said Kibbe, then no costs shall be allowed for not prosecuting the same, but the said Kibbe shall pay costs to the plaintiff in that case to be taxed. And it is further ordered, that if upon the trial of the said issue, a verdict shall be given for the said Kibbe, or it shall happen that the plaintiff shall not further prosecute his said suit for any other cause than for not confessing lease, entry, and ouster, then the lessees of the plaintiff shall pay to the said Kibbe costs in that case to be adjudged.

GEORGE F. SALLE, *Att'y for pl'ff.*

Received and executed the 8th September, 1837, by delivering a copy of the within writ to Gains Kibbe.

WM. MAGEE, *Sheriff of M. C.*
By M. D. J. BALDWYN, *D. S.*

M. D. J. Baldwin, being duly sworn, deposeth and saith, that on the 8th September, 1837, he did personally serve on Gains Kibbe, the

defendant in this suit, who is the actual occupant of the premises for which this action is brought, a true copy of the declaration hereto annexed, and also a true copy of the notice in writing to the said declaration subjoined, and hereto annexed.

M. D. J. BALDWYN.

Subscribed and sworn to before me, this 27 March, 1838.
CHARLES A. HENRY, *J. P. M. C.*

JOHN GOODTITLE, ex dem. heirs of Wm. Pollard, vs. RICHARD SHAMTITLE. } April term, 1838.

Gains Kibbe, by his attorney, comes and defends the force and injury, when, &c., prays to be defendant in this cause in lieu of the casual ejector; confess lease, entry, and ouster, insists on the title only, and for plea says he is not guilty in manner and form as the plaintiff hath thereof alleged against him; and of this he puts himself upon the country.

GORDON, CAMPBELL & CHANDLER,
STEWART, THORNTON & EASTON,
Attorneys for def't.

This case has been regularly continued from term to term since the April term, 1838, down to spring term, 1845, and on the 29th day of May, 1845, being a day of the said spring term, 1845, the following judgment was rendered, to wit:

JOHN GOODTITLE, ex demise of the heirs of William Pollard, vs. RICHARD SHAMTITLE—JAMES KIBBE, } Ejectment.

This day came the parties, by their attorneys, and also came a jury of good and lawful men, who being empannelled and sworn well and truly to try the issue joined, on their oaths do say: we, the jury, find for the defendant. It is therefore considered by the court, that the defendant go hence and recover of the plaintiff his costs by him about his defence in this behalf expended; to which judgment the plaintiff objects, and prays the court for an appeal to the June term, 1845, of the supreme court of the State of Alabama, which is granted by the court.

Bill of Exceptions.

STATE OF ALABAMA, *Mobile county:*

On the trial of this cause the plaintiff produced a copy from the land office hereto attached, marked exhibit A; the original paper in Spanish hereto attached, marked B, for the premises in dispute. The act of Congress, passed 26th May, 1824, entitled an act granting certain lots of ground to the corporation of the city of Mobile, and to certain individuals in said city, and an act of Congress of 2d July, 1836, entitled an act

for the relief of Wm. Pollard's heirs, and a patent of the U. S. in pursuance of the said act for the lot in controversy, to the lessors of plaintiff; the plaintiff further proved that in the year 1813 or '14, some wreck and drift wood was removed from the place where the premises in question now are by the hands of William Pollard, the grantee.

It was proved that in the year 1823, no one being then in possession, and the same being under water, Curtis Lewis, without any title, took possession of and filled up east of Water street, and from it 80 feet east, and to the north of Government street; that Lewis remained in possession about 9 months, when he was ousted in the night by James Inerarity, one of the firm of Panton, Leslie & Co., and of John Forbes & Co., its successor, claiming the land under the Spanish grant hereto attached, and improved the lot by the erection of a smith's shop. That shortly afterwards, Curtis Lewis recovered the possession under a forcible entry and detainer proceeding, and remained in possession for several years, during which he and Forbes & Co. were engaged in a lawsuit.

The whole matter was terminated by the purchase in 1829, by Henry Hitchcock, of the title of Forbes & Co., of Curtis Lewis, and of the Mayor and Aldermen of Mobile. Henry Hitchcock remained in the possession of the property till 1835, when he sold to the defendant for $28,000.

The defendant produced the original Spanish grant hereto attached, A, and the English copy, for the premises in dispute, with the certificate of confirmation, and produced the conveyances aforesaid, shewing the title under which he claims.

He proved that Panton, Leslie & Co., and Forbes & Co., have had possession of the lot specified in their grant from its date; that they fulfilled the conditions which are specified therein; that to the east of the present site of Water street, they had a canal extending into the river, and through which their boats came up; that there was an embankment on both sides of this canal on which their goods were landed, and from which their shipments were made. The fillings up done by Lewis were done by sinking flat boats in this canal.

The particular lot now sued for lies south of the canal and embankment aforesaid, and are between the King's old wharf and Forbes's canal; they lie to the east of Water street, and fall within the lines laid down in the patent.

The particular land in this writ was never improved until Curtis Lewis made the fillings up. It was further in proof that previous to 1819, then, and until filled up, the lot claimed by plaintiff was at ordinary high tides covered with water, and mainly so at all stages of water; that the ordinary high tide flowed from east about the middle of what is now Water street at that time. That in the Spanish times the eastern part of the lot to the west of Water street were subject to be covered by water at ordinary tides by a flow of water from the river. That what is Water street at this time, was a natural ridge which was not usually overflowed except at high tides; but there was a depression to the north

of the lot of defendants, across which it flowed around upon the eastern parts of the lots lying to the west of the lots sued for. This ridge was about 15 feet wide; Water street was laid out in 1820, and is 60 feet.

That no one had possession of the premises in question before 1826, except as before stated. The lines of the lot in the Spanish grant being extended to the river include the premises in dispute.

It was further in evidence that Mr. Pollard died in 1816.

TEST & PHILLIPS, *For plaintiff.*
J. A. CAMPBELL,
STEWART & EASTON,
For defendants.

And upon this evidence the court gave the following instructions to the jury, to wit:

POLLARD'S HEIRS
vs.
SHAMTITLE.

Plaintiffs' claim under a Spanish grant by Cayateno Perez, of date Dec. 12, 1809, act of Congress confirming the same, July 2d, 1836, and a patent from the U. S. in pursuance thereof, dated March 15th, 1837.

Defendant insists that plaintiffs' title is not good, because the Spanish grant of itself is incomplete and invalid, and although it was confirmed by act of Congress in 1836, yet the premises sued for being the shore of a navigable river, lying below high-water mark at the time the State of Alabama was admitted into the Union, Congress, at the time of the act of confirmation, had no control over the subject, and was powerless to add any thing or impart any vitality to the Spanish grant.

The plaintiffs reply and say, that by the treaty of 1819 with Spain, Spanish grants of the character of that under which the plaintiffs claim was recognised by the United States, and assumed the obligation that said grants should be satisfied and confirmed. This obligation the plaintiffs contend is to be considered as a contract between the persons holding these grants; and no legislation of the United States, without the consent of such persons, can impair this obligation, or excuse the performance of the duties it clearly imposes.

From this statement of the case the first question that naturally presents itself is, what was the character of the interest the U. S. had in the premises in 1836, or had they any interest at that time in the soil?

In March, 1819, Congress passed an act to enable the people of Alabama territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States. That act declares that all navigable waters within the said State shall forever remain public highways, free to the citizens of said State and the United States. What is the footing on which the original States stand in regard to the shores of their navigable rivers, and the soil covered by them? That footing is certainly the perfect and absolute control of the shores of those rivers in the respective States,

except so far as the United States Goverment may find it necessary to use them in the legitimate exercise of its constitutional rights. For the purpose of enabling itself to do this, so far as Alabama is concerned, it has *nought* thought proper to assert any rights of ownership in the shore, but has rather relinquished the idea of such ownership in itself, and recognised it in the State, by stipulating for a free use of said shores by the citizens of the United States.

What has been said is based upon the assumption that by the treaty with Spain the U. States acquired the same property in the shores of navigable rivers that Spain had, and that they had by the act of 1819 transferred the rights acquired under the treaty to the State of Alabama, reserving only the easement of navigation to the citizens of the U. States. The question then arises, could the United States in contravention of the obligation they had incurred under the Spanish treaty to ratify and confirm these Spanish grants?

If Spain could have granted the shores of navigable rivers, and the same power that Spain had, had been conferred in the United States by the treaty of 1819, and in pursuance of that treaty, and the pledges therein given, the United States had confirmed this grant prior to the admission of Alabama into the Union, there can be no doubt that the plaintiffs' title would have been valid; but this was not done.

Before it is done the United States place themselves in a position where they cannot do it. Whether they ought to have placed themselves in that position, or what are the consequences of this act, so far as the Spanish government is concerned, or the inviolability of the treaty between the two nations, it is needless now to inquire. If wrong has been done, the law of nations indicates the remedy. We must look at things as they are, and so viewing, the court is impelled to the conclusion, that if at the time of the admission of the State of Alabama into the Union, the land described in plaintiffs' declaration was below ordinary high-water mark, there was no interest in the same in the United States in 1826, and that the act of confirmation, and the patent in pursuance thereof could not aid plaintiffs' title, and that the same is invalid and unsound."

To which charge the plaintiffs *accept*, and pray the court to sign, seal, and certify this bill of exceptions, which is done.

I, Augustus Brooks, clerk of the circuit court for Mobile county and State of Alabama aforesaid, do hereby certify, that the foregoing is a full and complete record of all the proceedings had in the above entitled case.

In testimony whereof I have hereunto set my hand, and affixed the [SEAL.] seal of the said court, at my office, this twenty-ninth day of May, 1845. A. BROOKS, *Clerk*.

Exhibit A.

Claim Number two.—(Translated from the Spanish.)

TO THE COMMANDANT:

William Pollard, an inhabitant of this district, states to you with all respect, that, whereas he has a mill situate on his place of abode, and

that he frequently comes to this place with planks and property from his mill, that therefore he wishes to have a situation favorable to the landing and safety thereof. And there being a vacant piece of ground at the edge of the water between the canal called John Forbes's and the wharf of this place, he prays you to grant him said piece of ground at the edge of the water, the better to facilitate his business. A favor which he hopes to obtain from you.

Mobile, December 11th, 1809.

WILLIAM POLLARD.

MOBILE, *December 12th*, 1809.

I grant to the petitioner the piece of ground which he asks for, at the edge of the water, if it be vacant.

CAYETANO PEREZ.

(There is this endorsement on the back of the grant :) "Translated and recorded in book B, page 424.

EDWARD KINGSTON, *Clerk*."

James Brady, after being duly sworn, deposeth and saith, that early in the year eighteen hundred and eleven, William Pollard claimed, and still continues to claim, one lot of land, lying as follows: bounded on the south by an old Spanish wharf, and on the north by a canal belonging to the house of Forbes & Co., on the east by the channel of Tombigbee river, and on the west by high-water mark.

JAMES BRADY.

Sworn to before me, this 25th August, 1814.

LEWIS JUDSON, *J. P.*

This affidavit recorded in the books at Augusta, Mississippi, in book B, page 425.

Joshua Kennedy appeared, and being duly sworn, deposeth and sayeth, that in the fall of the year 1813 he saw the hands of William Pollard, senior, under his (Pollard's) superintendence, on a lot or piece of ground situated in the city of Mobile, on the east side of where Water street now is, and between the Mobile river and Water street, and bounded on the south by the old Spanish wharf, and on the north by the channel of Forbes & Co.; that they were employed removing from the said lot the wreck of an old schooner or gunboat; that they were instructed by the American commander of Fort Charlotte to desist from so doing, but on the said Pollard exhibiting the grant from the Spanish authorities to the said lot to the American commander aforesaid, the said Pollard was permitted by the said commander to proceed and clear up the said lot by removing the wreck of the said vessel.

JOSHUA KENNEDY.

Sworn to and subscribed before us, this 17th May, 1827.

JOHN B. HAZARD,
GEORGE CONWAY.

MOBILE, *May* 18, 1827.

Personally appeared Thomas G. Newbold, an inhabitant of Mobile since the year 1810, and being duly sworn deposeth, that he was acquainted with William Pollard, senior, deceased, from the year 1810 to the time of his death; that the said Pollard had a saw mill on the Tensaw settlement, below the line of demarkation, and that he frequently came to Mobile with lumber previous to the fall of Fort Mims in 1813: that after that misfortune took place, he in common with the inhabitants of that settlement fled to Mobile. That in the winter of 1813 and 1814, he saw frequently Mr. Pollard's hands at work on a lot situated in the city of Mobile, on the east side of Water street, and bounded by the said street on the west, by the old Spanish wharf on the south, by the river Mobile on the east, and on the south by the canal of John Forbes & Co., clearing away an old wreck with the avowed intention of building a wharf on the same; that while they were so employed the commander of the United States forces at this place, understanding his intentions stopped his work, and ordered off his hands; but in a day or two permitted them to proceed in their work again, which they continued for a considerable time. I understood that Pollard had a claim to the said lot, and know that he exercised the rights of ownership afterwards by delivering wood, &c., there.

When Mr. Pollard first came to Mobile, on the breaking out of the Indian war, he could get no shelter, and I let him and family live in a part of my house, which may account for my knowing so much of his business.

Though Mr. Pollard was in bad health, he was frequently down overlooking his hands while they were at work on the said lot.

When the warm season came on he moved out of town; soon after which his health became worse, and he lingered till the year 1816–'17, when he died of a consumption, leaving a widow and six children.

T. G. NEWBOLD.

Sworn to and subscribed before me, this 19th May, 1827.

JOHN B. HAZARD.

To the board of commissioners, acting under the authority of an act of Congress, dated March 3, 1827, for the adjustment of land claims in the State of Alabama.

Please notice that as executor of the estate of William Pollard, deceased, I present to you the claim of the said Pollard to a lot situated in the city of Mobile, and bounded on the west by Water street, on the north by the old channel of John Forbes & Co., on the east by the channel of Mobile river, and on the south by the old Spanish wharf, which said claim was presented to the former commissioners, as will appear by the endorsement on the original grant, and a certified copy of the same from the commissioners at Jackson Court-house, but not acted on definitely by them, together with the evidence then offered, and further evidence now produced in support of it.

Very respectfully,

CYRUS SIBLEY, *Executor*, &c.

The above claim and depositions recorded May 18th, 1827.

G. SALTONSTALL, *Clerk.*

Personally appeared Joshua Clements, who being duly sworn saith, that in the year 1813, some time between June and December, William Pollard, deceased, was in possession of a piece of ground next [to] the water, lying between the King's wharf and the canal of John Forbes & Co., and during the time occasionally saw the hands of said William Pollard at work removing a wreck from said piece of ground; that he was stopped from said work by the American commander of the fort, and afterwards permitted to continue the same. And further saith not

JOSHUA CLEMENTS

Sworn to and subscribed before the board, this 22d May, 1827.

G. SALTONSTALL, *Clerk.*

The above deposition is recorded May 12th, 1827.

D.—*D*, *No.* 2.

Abstract of claims to lots in the town of Mobile, founded on orders of survey, regular permissions to settle, or other evidence of title presented to the commissioners appointed under the act of Congress of the 3d March, 1827, entitled an act supplementary to the several acts for the adjustment of land claims in the State of Alabama, which the claimants alleged were derived from the French or Spanish authority, and in the opinion of the commissioners are not entitled to confirmation.

Number one. By whom claimed, heirs of W. Pollard; original claimant, William Pollard; nature of claim, Spanish permit; date, 1809, December 12th; by whom granted, Com't Cayetano Perez; quantity, not named; where, east of Water street; surveyed, when, by whom, none, none; inhabitation and cultivation, none, none.

Remarks. This lot does not appear to have been improved or occupied by the grantee, or any person under him, prior to the 15th April, 1813, or to have been improved under this claim since that period.

LAND OFFICE, ST. STEPHEN'S, ALA.,
April 18th, 1845.

I do hereby certify, that the annexed and foregoing transcript of the claim of William Pollard, senior, in his own right, has been correctly copied from the book of claims laid before and acted on by the commissioners, John B. Hazard and John H. Owen, as the same appears in this office. Witness my hand and seal of office.

JAMES MAGOFFIN, *Register*. [SEAL.]

B.—Exhibit B.

Claim No. 2.

(Translated from the Spanish of the original application and grant.)

To the commandant.

William Pollard, an inhabitant of this district, states to you with all respect, that whereas he has a mill situate on his place of abode, and

that he frequently comes to this place with planks and property from his mill, that therefore he wishes to have a situation favorable to the landing and safety thereof, and there being a vacant piece of ground at the edge of the water, between the canal called John Forbes's and the wharf of this place, he prays you to grant him said piece of ground at the edge of the water, the better to facilitate his business. A favor which he hopes to obtain from you.

MOBILE, *December* 11*th*, 1809.

WILLIAM POLLARD.

MOBILE, *December* 12*th*, 1809.

I grant to the petitioner the piece of ground which he asks for at the edge of the water, if it be vacant.

CAYETANO PEREZ.

There is this endorsement on the back of the grant: "Translated and recorded in book B, page 424.

EDWARD KINGSTON, *Clerk*."

Patent.

United States of America, to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in the General Land Office a certificate of the register and receiver of the land office at St. Stephen's, Alabama, whereby it appears, under the provisions of the act of Congress approved on the second day of July, one thousand eight hundred and thirty six, entitled an act for the relief of William Pollard's heirs, there has been surveyed, as being confirmed to them by the said act, a tract of land within the city of Mobile, and State of Alabama, in township four south, of range one west, of the meridian line, bounded and described as follows, to wit, beginning at a stake on the east side of Water street, on the north boundary of what was formerly known as the Kings' wharf, being fourteen feet south of the present south boundary of Government street, (which stake is south eleven degrees east, distant fourteen feet from the southeast angle of Government street and Water street, which is north seventy-five degrees fifteen minutes east, distant fifty-five feet from the northeast corner of the lot surveyed, as confirmed to the heirs of Espejo, and held under certificate number five;) thence, with the east boundary of Water street, north eleven degrees west, one hundred and eighty-one feet, to a stake on the south boundary of what was originally designated as John Forbes & Co's land; thence, with said canal, north seventy-eight degrees forty-five minutes east, four hundred feet, to the west edge of the channel of Mobile river; thence, with said channel, south eleven degrees east, one hundred and eighty-one feet; thence, south seventy-eight degrees forty-five minutes west, four hundred feet, to the place of beginning; containing seventy-two thousand four hundred superficial feet. There is therefore granted by the United States unto William Pollard, John Pollard, Harriet

Fowler, wife of John Fowler, formerly Harriet Pollard, Phebe Ensign, wife of Henry P. Ensign, formerly Phebe Pollard, Louisa Huggins, wife of George Huggins, formerly Louisa Pollard, and Eliza Case, wife of Joseph Case, formerly Eliza Pollard, as being the only heirs at law of William Pollard, and to their heirs, the tract of land above described. To have and to hold the said tract, with the appurtenances, unto the said William Pollard, John Pollard, Harriet Fowler, wife of John Fowler, formerly Harriet Pollard, Phebe Ensign, wife of Henry P. Ensign, formerly Phebe Pollard, Louisa Huggins, wife of George Huggins, formerly Louisa Pollard, and Eliza Case, wife of Joseph Case, formerly Eliza Pollard, as being the only heirs at law of William Pollard, and to their heirs and assigns, forever. Provided, nevertheless, that the said confirmation and this patent shall only operate as a relinquishment on the part of the United States of all their right and claim to the above described lot of ground, and shall not interfere with or affect the claim or claims of third persons.

In testimony whereof I, Martin Van Buren, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourteenth day of March, in the year of our Lord one thousand eight hundred
[SEAL.] and thirty-seven, and of the independence of the United States the sixty-first.

By the President:

MARTIN VAN BUREN,
By A. VAN BUREN, *Secretary.*

HUDSON M. GARLAND,
Recorder of the General Land Office.

Recorded vol. C, page 91; examined.

Received in office, for record, March 11th, 1845.
D. THOMPSON, *Clerk.*

Recorded in book No. 8, pages 326 and 327.
D. THOMPSON, *Clerk.*

Agreement.

TUSCALOOSA, *June* 5, 1846.

It is agreed that this record be amended by the erasure of the part just preceding the clerk's certificate, *the clerk's cortificate* within the lines drawn around it and erased, and also by adding a correct copy of the title of the defendant in error, being the Spanish grant to Panton, Leslie & Co., and certificate of confirmation for the same, for the lot corner of Government and Royal streets, and a translation thereof, as referred to in the bill of exceptions; and all objection to the omission of the signature of the judge to the bill of exceptions is waived.

GEORGE N. STEWART, *for De'ft in Error.*
JOHN TEST, *for Plaintiff in Error.*

Water lot No. 1.

Titulo de concesion de un solar en la Poblacion de la Mobila, en favor de los SS'res Panton, Leslie y Compañia; with certificate of confirmation prefixed.

Commissioner's report No. 2. *Certificate No.* 3.

LAND OFFICE, *Jackson Court House.*

In pursuance of the act of Congress, passed the 3d of March, 1819, entitled an Act for adjusting the claims to land, and establishing land offices in the districts east of the island of New Orleans.

We certify that claim No. 3, in the report of the commissioner numbered 2, (claimed by John Forbes & Co., original claimants, Panton, Leslie & Co.,) is recognised by the said act as valid against any claim on the part of the United States, or right derived from the United States; the said claim being for eighty feet in front and 304 in depth, area 24,320 feet, situate in the town of Mobile, and claimed by virtue of a Spanish grant, executed by J. V. Morales, and dated the 9th of June, 1802.

Given under our hands this 8th day of January, 1820.

W. BARTON, *Register.*
WM. BARNELL, *Receiver.*

Attest: JOHN ELLIOTT, *Clerk.*

Don Juan Ventura Morales, contador g'ral de exto., intendente interino de rl. hacienda de estas provincias de la Luisiana y Florida Occidental, superintendente, subdelegado, juez de arrivadas, de tierras, y solares realengas.

Por quanto, habiendose presentado en este tribunal los S'res Panton, Leslie y Comp'a, por medio de Don Guillermo Simpson, su agente y apoderado en la Movila, solicitando se les concediese un terreno en aquella plaza, con el frente de ochenta pies y ocho de fondo, vaxo la obligacion de lebantarlo terra plenandolo, como tambien el camino que va el muelle, por lo senagoso y pantanoso de uno otro, ademas de anegarse de que resulta perjuicio al publico, advertiendose la utilitad que experimentara con la obra que se ha ofrecido hacer segun se ha propuesto, como informo el s'or comandante y subdelegado de real hac'da de la misma plaza, Dn. Joaquin de Osorno: que dadose vista de la solicitad al sr. fiscal, convino á ella en el supuesto de cumplire lo ofrecido; que, por auto de primero de Febrero del corriente año, concedo á la casa de los enunciados Panton, Leslie y Comp'a, el terreno que á su nombre se pidio, vaxo las condiciones propuestas, con calidad de que informiese el citado sr. subdelegado el tiempo que era suficiente para esagnar las citadas condiciones, remitiendose un plano á la medida del indicado terreno, para que con arreglo á todo se despachase el titulo: que habiendo dirigido este plano contentivo de la medida hecha por el agrimensor, Dn. José Collins, el que acompaño el señor subdelegado, con su informe, mande unirlo todo al expediente, y por auto asesorado de

dos del corriente mande despachar el titulo con la prevencion que se dira: Por tanto, usando de la facultad cometida á esta intendencia, en nombre del Rey n'ra señor, (Dios le gu'e,) concedo á la casa de los enunciados señores Panton, Leslie y Comp'a, el terreno que ha solicitado en la plaza de la Movila, en el parage contenido en el plano figurativo que se ha remitido, vaxo las dimenciones, rumbos, y distancias que comprehende, contentivo de ochenta pies de frente á la calle Real, y doscientos ochenta y ocho de profundidad, hasta el rio de la citada Movila, lindando por sus costados con la calle del Govierno y terreno de la misma casa y comp'a; en cuya virtud, le declaro entero y directo dominio al enunciado terreno, para que, como suyo proprio, lo dispute, use, ó enagene á su voluntad, dandole poder para que aporhenda la posesion ó la reclame, si se le impidiese, y en la que le prongo y amparo sin perjuicio de tercero que mejor derecho tenga, con la calidad, condicion, y circunstancia d levantarlo, rellenarlo, ó terra plenarlo, como tambien de componer el camino que tiene al muelle, segun se a ofrecicido, para impedirlos perjuicios esperimentados hasta ahora, y que el publico quede veneficiado de sus resultas, sin cuyas operaciones que se haran dentro de quatro meses, contados desde el dos del corriente, quedara nula esta gracia; mediante lo qual, mande librar el presente, firmado de mi mano, sellado con el de mis armas, y refrendado del infrascripto escribano de rl. hac'da, quien como tambien la contaduria principal tomaro la razon de este titulo, como esta dispuesta en las instrucciones.

Dado en esta ciudad de la Nueva Orleans, á nueve de Junio de mil ochocientos dos.

[SEAL.] JUAN VENTURA MORALES.

Por medio del sr. intendente:

CARLOS XIMENES.

Nota.—Que queda tomado razon del titulo anteced'te, en el libro de ellos, á foxas quarenta y quatro buelta hasta la quarenta y seis.

N'a Orleans, f'ha ut supra. XIMENES.

NUEVA ORLEANS, 12 *Junio de* 1802.

En la contaduria pe'nal de exto., y rl. hac'da de esta ciudad de Nueva Orleans, se tomo razon del titulo antecedente, en el libro destinado á este fin, á f. 106 á-y 11, como se previene.

MANUEL ARMIRES.

GILBERTO LEONARD.

[For diagram, see original.]

Don Vincente Sebastian Pintado, agrimensor general de la Florida Occidental.

Haviendo concedido el señor intendente g'ral de esta provincia á los ss'res Panton, Leslie y Compañia, un solar de ochenta pies de ancho y

doscientos ochenta y ocho de largo, en la Poblacion de la Mobila, segun el titulo de concesion en forma, despachado en la Nueva Orleans, capital de la Luisiana, en nuebe de Junio de mil ochocientos y dos, al que se omitio agregar pr. mi antecesor el duplicado de la dilig'a de apeo y plano demonstrativo, mi aperece registrado en la oficina de agrimensura gen'l, ahora á mi cargo; y constando por el dicho utulo de conces'n, haverse medido é lindado el solar, por el agrimensor disputado, que fue para aquel puesto Dn. Josef Collins; cuio plano figurativo y dilig'a de apeo original se unio al expediente del asiento promovido per Don Guillermo Simpson, agente de d'ha casa, se presento Don Juan Forbes, en la actualidad director de la misma, con el duplicado del plano y diligencia, dado por el citado Collins, para que en su vista se registrarse y despachase, documentico, autentico, y comprobante, para unir al titulo de concesion del d'ho solar, el que esta situado en la anted'ha Poblacion de la Mobila, y lado del este de la calle Real, lindando por la parte septentrional con otro solar de la misma casa, por la meridional con la que llaman calle de Gobierno, sobre la que se cuentan los doscientos ochenta y ocho pies de largo, por la oriental con el rio de la Mobila, y por la occidental con la citada calle Real, sobre la que se cuentan los ochenta pies de su ancho, como mas claramente manificeta el plano que antecede, copiado del que formo el referido agrimensor. Y, para que conste, doy la presente en la plaza de Penzacola, á los veinte y seis dias del mes de Septiembre de mil ochocientos y seis años.

Advertencias.

Aunque el original no mensiona si los pies lineales que miden los lados del terreno son de Burgos, Londres, ó Paris, se deven entender los ultimos, por ser conforme á la costumbre geodetica de esta provincia.

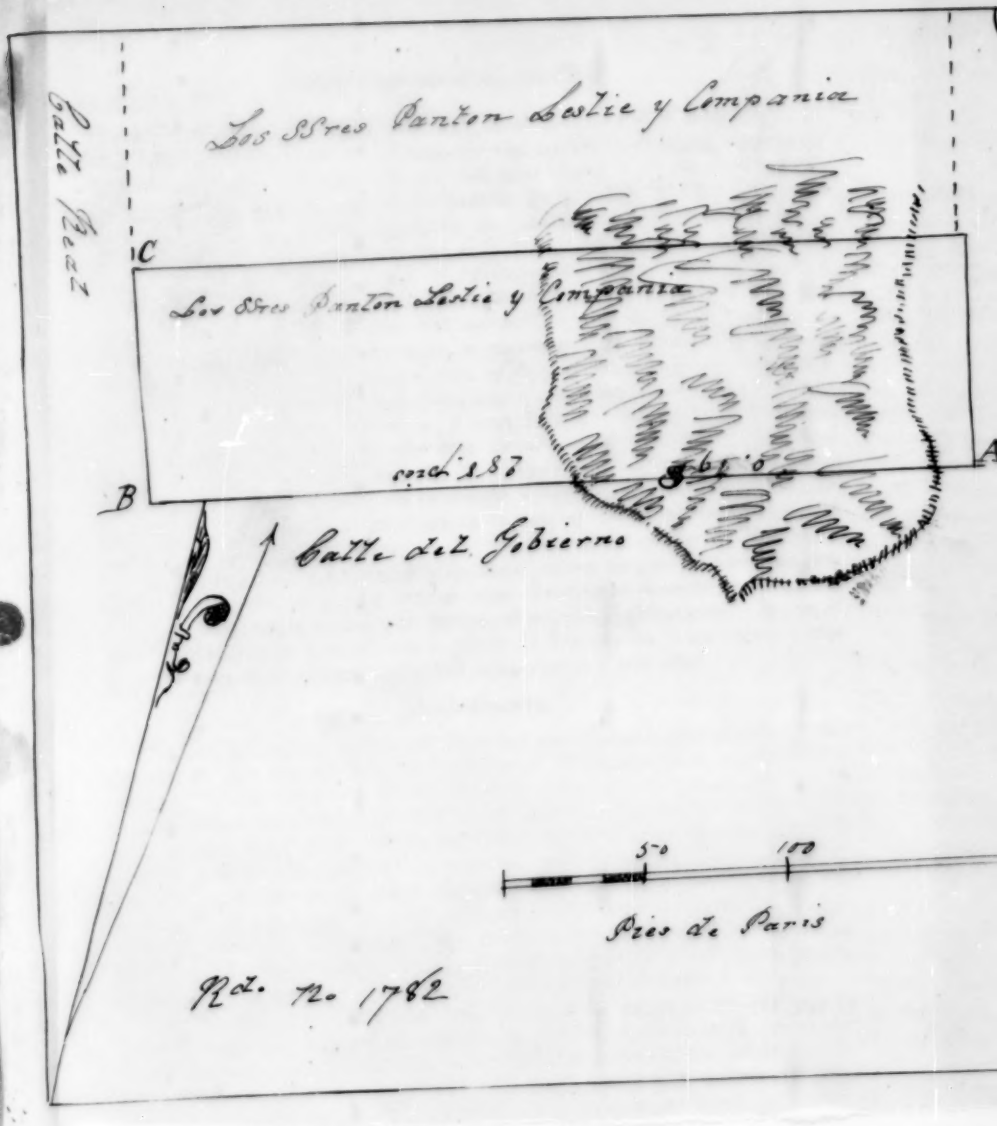
Segun la delineacion del solar en el plano, forma un paralellogramo rectangulo, continiendo por consiguienta setenta perchas trienta y seis pies de area ó superficie plana; pero no concuerda las direciones de la brujula, anotadas en el, con d'ha figura, pues dirigendose la recta AB el sur 62° O. de la aguja, para que la BC le fuese perpendicular levantada del extremo B, deveria corer al N. 28° O., por lo que se tendra presente en todo evento que la figura del terreno debe ser la de parae logramo rectangulo, se tomara la que mas adapte al local.

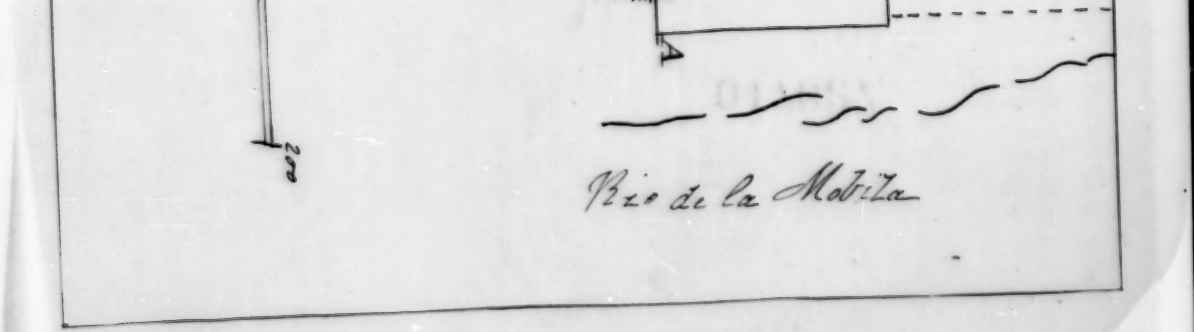
Sin embargo de que en el original se dice lindar el terreno por la parte oriental con el rio de la Mobila, y que en el plano se figura el extremo mas este del d'ho, á cierta distancia al oeste del rio, se debera tener entendido que los doscientos ochenta y ocho pies deben contarse desde el lado oriental de la calle Real, azia el rio hasta donde alcanzen. F'ha ut retro.

VICENTE SEBAS'N PINTADO.

Queda registrado en el lib. vii de apeos, fol. 6 y buelta, No. 1782. Panzacola, f'ha ut retro.

VINCENTE SEBAS'N PINTADO.


Los Sres Panton Leslie y Compania
Calle Real
C
Los Sres Panton Leslie y Compania
A
B
Calle del Gobierno
50
100
Pies de Paris
Rl. No. 1782


Rio de la Mobila

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Advertencias.

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Sin embargo de que en el original se dice lindar el terreno por la parte oriental con el rio de la Mobila, y que en el plano se figura el extremo mas este del d'ho, á cierta distancia al oeste del rio, se debera tener entendido que los doscientos ochenta y ocho pies deben contarse desde el lado oriental de la calle Real, azia el rio hasta donde alcanzen. F'ha ut retro.

VICENTE SEBAS'N PINTADO.

Queda registrado en el lib. vii de apeos, fol. 6 y buelta, No. 1782. Panzacola, f'ha ut retro.

VINCENTE SEBAS'N PINTADO.

Notice. The defendants in error object to this transcript: 1st, Because there is no writ of error. 2d, Because no citation. 3d, No bond for costs. 4, The bill of exceptions is imperfect, not signed, and contains a matter not in the original bill of exceptions, and omits the title of the defendant below.

Agreement.

TUSCALOOSA, *June term*, 1846.

It is agreed that this record be amended by the erasure of the part just preceding the clerk's certificate, within the lines drawn around it and erased, and also by adding a correct copy of the title of the defendant in error, being the Spanish grant to Panton, Leslie & Co., and certificate of confirmation for the same for the lot corner of Government and Royal streets, and a true translation thereof, as referred to in the bill of exceptions; and all objection to the omission of the signature of the judge to the bill of exceptions is waived.

GEORGE N. STEWART,
for Defendant in error.
JOHN TEST,
for Plaintiff in error.

And at June term of the supreme court, 1846, the plaintiff, by his attorneys, came and filed his assignment of errors, which is in the words and figures following, to wit:

The plaintiff in this comes and says, that in the record and proceedings below, there is manifest error, in this, that the judgment ought to have been for the plaintiff, and not for the defendant. He further assigns for error in the case the instructions of the judge to the jury, and that the same are erroneous and contrary to law.

TEST & PHILLIPS,
Attorneys for Plaintiffs.

And the defendant, by his counsel, says "There is no error in the record." G N. STEWART, *for Def't in error.*

And on the sixteenth day of November, in the year eighteen hundred and forty-six, being a day of the June term of the supreme court in the year eighteen hundred and forty-six, present all the judges of the said court, the following proceedings were had in the above stated cause, to wit:

POLLARD'S HEIRS
vs.
GAINS KIBBE.
} From Mobile circuit court.

This day again came said parties, by their attorneys, and the record in this cause, and the matters assigned for error therein, being argued and examined, it seems to the court, that in the record and proceedings of said circuit court there is no error. It is therefore considered that the

judgment of said circuit court be affirmed, and that the defendant in error recover against plaintiffs the costs of this court.

THE STATE OF ALABAMA, *ss:*

I, James B. Wallace, clerk of the supreme court of the State aforesaid, do hereby certify, that the foregoing is a correct transcript of the record and proceedings in the cause first above stated, decided at June term, eighteen hundred and forty-six, of the said supreme court, the originals of which are on file in my office, and remain of record.

In testimony whereof I have hereunto set my hand and private seal, having no seal of office, this ninth day of September, A. D. one thousand eight hundred and forty-seven, at my office, at the capital of said State.

JAMES B. WALLACE,
Clerk supreme court, Alabama.

Filed 24 December, 1847.